

Attachment A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

OCT 19 2020

U.S. DISTRICT COURT-WVND  
CLARKSBURG, WV 26301

Philander McFarland

*Your full name*

FEDERAL TORTS CLAIM ACT  
COMPLAINT

v.

Civil Action No.: 3:20cv201  
(To be assigned by the Clerk of Court)

Groh  
Trumble  
Sims

UNITED STATES OF AMERICA

I. JURISDICTION

The Court has jurisdiction over this action pursuant to: Title 28 U.S.C. Section 2671, et seq. (FTCA) and Title 28 U.S.C. Section 1346(b)(1).

II. PLAINTIFF

*In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.*

A. Your full name: Philander McFarland Inmate No.: 16362-075  
Address: USP- Beaumont P.O. Box: 26030  
Beaumont TX. 77720

III. PLACE OF PRESENT CONFINEMENT

Name of

Prison/Institution: USP- Beaumont

A. Is this where the events concerning your complaint took place?

☐ Yes ☒ No

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If you answered "NO," where did the events occur?

USP-Hazleton P.O. Box 2000

Bruceston Mills 26525

IV. PREVIOUS LAWSUITS

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? ☒ Yes ☐ No

B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "IV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): Philander McFarland

Defendant(s): L. Ellen et. al.

2. Court: United States district court  
(If federal court, name the district; if state court, name the county)

3. Case Number: 5:20 cv 127

4. Basic Claim Made/Issues Raised: Prisoner Civil Right

5. Name of Judge(s) to whom case was assigned: John Preston Bailey

6. Disposition: dismissed  
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: 3-17-2014

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
**WHEELING**

PHILANDER MCFARLAND

**Plaintiff**

Case No.: 5:20-cv-127

v.

L. ELLEN, et al.

**Defendant**

**NOTICE OF DEFICIENT PLEADING  
AND INTENT TO DISMISS**

The pleading is not on a court-approved form. Therefore, the Clerk is giving notice as follows:

- The Pleading will be stricken from the docket within thirty (30) days from the date of this notice.  
LR PL P 3.4.7
- This action will be dismissed without prejudice within thirty (30) days from the date of this notice.  
LR Civ P 41.01
- If Petitioner wishes to pursue this action, he must file on the **ATTACHED CORRECT FORMS**  
per Local Rules of Prisoner Litigation Procedure 3.4★★

If Petitioner RE-FILES on the correct forms, a new civil action number will be given to that filing.

**★★WARNING!**

**FAILURE TO COMPLETE AND SUBMIT EACH OF THE CORRECT AND  
REQUIRED FORMS IN THEIR ENTIRETY COULD RESULT IN DELAYS IN  
YOUR CASE OR YOUR COMPLAINT COULD BE DISMISSED!**

**WHEN REFILING WITH CORRECT COMPLAINT/PETITION FORM, MERELY  
STATING ON THE FORM "SEE ORIGINAL COMPLAINT" OR "SEE  
ORIGINAL PETITION" OR ATTACHING THE ORIGINAL COMPLAINT/  
PETITION AS AN EXHIBIT IS NOT SUFFICIENT.**

Dated: 6/26/2020

Enclosures

Cheryl Dean Riley, Clerk of Court  
By: **/s/ N.M. Maxwell, Deputy Clerk**

Deputy Clerk

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8. Approximate date of disposition. Attach copies: 8-21-2020
- C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?  
☒ Yes ☐ No
- D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought. Institutional  
Open House. Was told staff would handle complaint
- E. Did you exhaust ALL available administrative remedies?  
☒ Yes ☒ No
- F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted. N/A
- G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS"

## 1. Parties to previous lawsuit:

Plaintiff(s): Philander McFarlandDefendant(s): McFall

G. Previously dismissed actions or Appeals

© 2020

1. Parties to previous lawsuit:

Plaintiff: M<sup>r</sup> Farland

Defendant: Castell et al.

2. Name and location of court and case number: 3:14cv289

United States district court Tennessee Middle (Nashville) 6<sup>th</sup> district

3. Grounds for dismissal: failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit: 3-17-2014

5. Approximate date of disposition: N/A

"G. Previously dismissed action or appeals"

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
WHEELING**

**PHILANDER MCFARLAND,**

Plaintiff,

v.

Civil Action No. 5:20-CV-127  
(BAILEY)

**L. ELLEN, et al.,**

Defendants.

**ORDER DISMISSING CASE FOLLOWING NOTIFICATION**

On June 23, 2020, the *pro se* plaintiff filed a pleading which was docketed as a civil rights complaint pursuant to 42 U.S.C. § 1983. On June 30, 2020, the cause of action was changed to a *Bivens* Act. Because the complaint was not on the Court-approved form, the Clerk of Court issued the plaintiff a Notice of Deficient Pleading and Intent to Dismiss. The Notice informed the plaintiff that this case would be dismissed within 30 days. The Notice further informed the plaintiff that if he wished to pursue this matter, he would have to re-file his complaint on the Court-approved form. The Notice and Court-approved form were sent by certified mail, return receipt requested, and service was accepted on July 9, 2020.

To date, more than 30 days later, the plaintiff has failed to re-file his complaint on the Court-approved form. Accordingly, pursuant to the terms of the Notice, the Court **ORDERS** that this action is hereby **DISMISSED WITHOUT PREJUDICE**.

The Clerk is directed to send a copy of this Order to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

DATED: August 21, 2020.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE



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2. Name and location of court and case number: United States district court middle of Tennessee (Nashville) division case 3:14 cv 738
3. Grounds for dismissal: ☐ frivolous ☐ malicious  
☒ failure to state a claim upon which relief may be granted
4. Approximate date of filing lawsuit: 3-17-2014
5. Approximate date of disposition: N/A

V. ADMINISTRATIVE REMEDIES PURSUANT TO THE FTCA

- A. Did you file an FTCA Claim Form (SF-95), or any other type of written notice of your claim, with the appropriate BOP Regional Office?  
☒ Yes ☐ No






- B. If your answer is "YES," answer the questions below:

1. Identify the type of written claim you filed:  SF-95
2. Date your claim was filed:  N/A
3. Amount of monetary damages you requested in your claim:  
\$ 3,500
4. If you received a written Acknowledgment of receipt of your claim from the BOP, state the:
  - I. Date of the written acknowledgment: N/A
  - ii. Claim Number assigned to your claim: TRT-MXR-2020-04190

- C. If your claim involves individuals who are employed by government agencies **other than the BOP**, did you file an FTCA Claim Form (SF-95), or any other type of written notice of your claim with the appropriate government agencies? ☒ Yes ☒ No

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D. If your answer is "YES," answer the questions below:

1. Identify the specific government agency or agencies, including the addresses, where you filed notice of your claim:  
 N/A
2. Identify the type of written claim(s) you filed:  N/A
3. Date your claim(s) were filed:   N/A
4. Amount of monetary damages you requested in your claim(s):  
 NONE
5. If you received a written Acknowledgment of receipt of your claim(s), state the:
  - I. Date of the written Acknowledgment: NONE
  - ii. Claim Number assigned to your claim: NONE

E. If the BOP (or other government agency that received notice of your claim) either denied your claim or offered you a settlement that you did not accept, please state whether you requested reconsideration of your claim.

☒ Yes ☐ No

1. If you answered "YES," state the:
  - I. Date you requested reconsideration: 6-2-20
  - ii. Date the agency acknowledged receipt of your request for reconsideration: N/A



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VI. STATEMENT OF CLAIM

State here, as **BRIEFLY** as possible, the facts of your case. You must include allegations of specific wrongful conduct as to EACH and EVERY federal employee about whom you are complaining. Describe exactly what each federal employee did. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN A SEPARATE CIVIL ACTION. NO MORE THAN FIVE (5) TYPED OR TEN (10) LEGIBLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: On September <sup>(correctional officers)</sup> (L. Ellen et. al.) and J. Plyes of Federal Bureau of Prison (medical unit) Force Plaintiff into AI-cell 103. Were Plaintiff fell off of "Bunk",  
on September 13, 2020, and was arm-assaulted inside of cell-103 by inmate Williams #90839-093,  
with Plaintiff lost of personal property/papers.

Supporting Facts: Taken to (SHU) [REDACTED] on September 13, 2020.

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

L. Ellen "Federal Bureau of Prisons" J. Snorderly "Federal Bureau of Prisons"  
Roundtree "Federal Bureau of Prisons" T. Martin "Federal Bureau of Prisons" K. Brown  
Federal Bureau of Prisons" J. Plyes "Federal Bureau of Prisons" Medical Unit"  
J. Hunt "Federal Bureau Prisons" [REDACTED] and Bird "Federal Bureau of Prison" Medical Unit.

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," please explain: employees understand/understood  
[REDACTED] their official duties of medical service and etc no need  
to explain (self explanatory)

CLAIM 2: Related claim: around [REDACTED] September 13, 2019 correctional  
officers at USP-Hazleton lost "personal property" [REDACTED]  
[REDACTED] while taken [REDACTED] the SHU plaintiff,  
From AI cell-103. [REDACTED] to

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Supporting Facts: Taken to (SHU) on September 13, 2020

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

N/A

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," please explain: employees understand/understood official duties (self explanatory)

CLAIM 3: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? ☐ Yes ☐ No

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If your answer is "YES," please explain: \_\_\_\_\_

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CLAIM 4: \_\_\_\_\_

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Supporting Facts: \_\_\_\_\_

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Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

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With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred?     ☐ Yes     ☐ No

If your answer is "YES," please explain: \_\_\_\_\_

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CLAIM 5: \_\_\_\_\_

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Supporting Facts: \_\_\_\_\_

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Identify each federal employee whose actions form a basis for this claim, and state the name of the federal agency that employs each such individual:

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With respect to each employee you have named above, state whether this individual was acting within the scope of his or her official duties at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," please explain: \_\_\_\_\_

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**VII. INJURY**

Describe **BRIEFLY and SPECIFICALLY** how you have been injured or your property damaged and the exact nature of your damages. Injuriys to the cranium  
~~lost~~ lost property, \$ 500,000 damages, \$ 500,000 punitive damages  
 pain and suffering.

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**VIII. RELIEF**

State **BRIEFLY and EXACTLY** what you want the Court to do for you. *Make no legal arguments. Cite no cases or statutes.*

Juster to serve Justice

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**DECLARATION UNDER PENALTY OF PERJURY**

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at USP- Beaumont on 8-11-20.  
(Location) (Date)

Philander M<sup>o</sup> Farland  
Your Signature